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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re the Marriage of YEN and FELIX LUU.

C095144

YEN N. LUU,

(Super. Ct. No. 07FL07955)

Respondent,

v.

FELIX LUU,

Appellant.

This is the second appeal arising out of this marital dissolution proceeding. (See *In re Marriage of Luu* (Jan. 11, 2022, C093680) [nonpub. opn.].) Felix Luu (husband) appeals from the trial court's order and award of attorneys' fees after a bench trial on issues reserved after an earlier division of the parties' assets and debts. Husband argues substantial evidence does not support the trial court's conclusion that he owes Yen N. Luu (wife) \$60,790. He also contends insufficient evidence supports the court's

conclusion he had the ability to pay \$20,000 in attorney's fees and costs. His arguments suffer from the same defects as in his first appeal. (*Ibid.*) Husband has not provided a record of the oral trial proceedings. As such, we must presume substantial evidence supported the trial court's findings and affirm.

I. BACKGROUND

On October 21, 2021, a bench trial was conducted on the remaining issues reserved from the 2020 trial on the parties' assets and debts. These reserved issues included the determination of the character and distribution of various bank accounts. After the 2021 trial, the court ordered husband to pay wife \$60,790 from his separate funds. The court also awarded wife \$20,000 in attorneys' fees and costs. To support the cost award, the court noted "there was evidence when the property was divided by Commissioner Parker in 2020, each of the parties received community value in excess of \$500,000."

II. DISCUSSION

" 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) " 'Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' " (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609.)

Under California Rules of Court, rule 8.120(b), "[i]f an appellant intends to raise any issue that requires consideration of the oral proceedings in the superior court, the record on appeal must include a record of these oral proceedings in the form of one of the following: [¶] (1) A reporter's transcript under rule 8.130; [¶] (2) An agreed statement under rule 8.134; or [¶] (3) A settled statement under rule 8.137." Husband elected to

proceed on appeal on an appendix and without any record of the oral proceedings. Each of the arguments presented in his opening brief are challenges to the sufficiency of the evidence. Without a record of the oral trial proceedings, we must presume there was sufficient evidence to support the court's findings. (*Rubin v. Los Angeles Fed. Sav. & Loan Assn.* (1984) 159 Cal.App.3d 292, 296.)

Without a record of the oral proceedings, “[o]ur review is limited to determining whether any error ‘appears on the face of the record.’ ” (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324-325.) Husband contends substantial evidence does not support the trial court's conclusion that he owes wife \$60,790 or its conclusion that he had the ability to pay \$20,000 in attorney's fees and costs. These claimed errors do not appear on the face of the record provided. For instance, husband challenges the bank account amounts laid out by wife in her trial brief, but without a record of the oral proceedings, we cannot assume what other evidence the trial considered on this issue. Similarly, husband asserts it is clear from the order after the 2020 trial that he was not awarded \$500,000 by the Commissioner. The 2020 order is insufficient to demonstrate error. Rather, it discloses potential sources for this finding. For instance, the 2020 order confirmed a residence then valuing \$360,000 to husband. The 2020 order also states husband, “in his Trial Brief, admits that there was a Stipulation and Order filed on January 12, 2009 that each [husband] and [wife] were to have received the same amount of profit-sharing distributions from the S-Corporations.” Without a record of the most recent oral proceedings, we cannot be certain why the trial court concluded husband had been awarded \$500,000 in 2020, and we cannot assume this was error. Rather, “we ‘ ‘must conclusively presume that the evidence is ample to sustain the [trial court's] findings.’ ” ’ ” (*Id.* at p. 324.)

III. DISPOSITION

The judgment is affirmed. Wife shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1)-(2).)

/S/

RENNER, J.

We concur:

/S/

BLEASE, Acting P. J.

/S/

ROBIE, J.